Journal of Law and Legal Reform
Vol. 4 Issue 4 (2023) 619–647
DOI: https://doi.org/10.15294/jllr.v4i4.74133
Online since: December 15, 2023

journal.unnes.ac.id/sju/index.php/jllr/index

Law Reform in Corporate Criminalization in Environmental Damage Cases in Indonesia

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Abstract

Environmental damage caused by corporate activities has become a pressing global concern, necessitating a re-evaluation of legal frameworks to address the intricate challenges associated with corporate criminalization. This abstract focuses on the need for law reform in Indonesia concerning corporate criminalization in environmental damage cases. The current legal landscape in

Indonesia exhibits gaps and inadequacies in effectively holding corporations accountable for environmental offenses. This paper explores the deficiencies in existing laws, including inconsistencies, limited penalties, and enforcement challenges. Additionally, it analyses international best practices in corporate environmental liability to provide a comparative perspective. Proposed reforms involve enhancing regulatory frameworks, increasing penalties for environmental violations, and improving enforcement mechanisms. The paper suggests the incorporation of principles such as corporate social responsibility and strict liability to ensure that corporations bear the consequences of their environmental actions. Furthermore, the exploration of alternative dispute resolution mechanisms and collaborative approaches between government agencies, civil society, and corporations is recommended for fostering a more holistic and effective regulatory environment. The study relies on a comprehensive review of existing legislation, case studies, and relevant literature on corporate criminalization and environmental law. The proposed reforms aim to strike a balance between encouraging sustainable corporate practices and ensuring swift, effective legal consequences for environmental wrongdoing. Ultimately, this paper contributes to the ongoing discourse on the necessity of law reform in corporate criminalization, offering insights tailored to the specific context of Indonesia's environmental challenges.

Keywords
Corporate Criminalization, Environmental Crime, Corporate Responsibility, Environmental Crime

Introduction

Indonesia engages in numerous economic activities predominantly orchestrated by state institutions and State-Owned Enterprises (hereinafter as BUMN), rather than relying solely on private enterprises. This dynamic gives rise to an intersection of corporate finance and state finance. Consequently, the enforcement of laws should not solely emphasize upholding legal norms but should, more significantly, strive to establish justice. This encompasses fostering a business environment that is equitable and characterized by legal certainty. The recent surge in instances of law enforcement criminalizing corporate policies has elicited heightened apprehension among business

leaders, particularly those serving as key decision makers.[1] This situation becomes even more worrying when the actions or policies taken have been carried out with full integrity and ethics, in the best interests of the company, without any legal violations or conflicts of interest occurring.

Corporate criminalization in environmental crimes is a topic that has received global attention in recent years. This is caused by increasing public concern about the environmental impacts caused by industrial and business activities. Corporations are often involved in activities that damage the environment, such as dumping hazardous waste, water and air pollution, and excessive exploitation of natural resources. As a result, there is significant environmental damage that can affect human health and the sustainability of the ecosystem.

The trend of increasing cases of criminalization of corporate business decisions has become a major concern in the last two to three years. Several large companies, such as Merpati Nusantara, PT. Telkomsel, Tbk., PT. Chevron, and more recently, PT. Indosat, Tbk., was entangled in these cases. This phenomenon has a significant impact on international investors' confidence in legal certainty in conducting business in Indonesia. Discussions related to this situation have even been held at an event with the theme "*Criminalization of Corporate Policies, Threats to Workers, and Serious Barriers to Investment in Indonesia*," organized by the Indonesian Petroleum Association (IPA) and the Paramedina Public Policy Institute (PPPI).[2]

The meaning of criminalization in this context is related to law enforcement, which is actually an abuse of authority or power in the law enforcement process. There are two stages in criminalizing an act. The first is to define the legal object or interest that is intended to be protected by criminal law. Objects here are defined as the rights of other people. These rights were within the realm of political philosophy before being reduced to rights in positive law. In the environmental context, this right is interpreted as a collective right to a healthy and clean environment. The second stage is to determine the types of actions that are prohibited and threatened with criminal

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1 Iqbal, Moch. "Kriminalisasi Korporasi dalam Tindak Pidana Korupsi Terkait BUMN Persero." *Jurnal Hukum dan Peradilan* 2, no. 2 (2013): 309-324. *See also* As-Salafiyah, Aisyah, Aam Slamet Rusydiana, and Ihsanul Ikhwan. "Central Bank Digital Currency (CBDC): A Sentiment Analysis and Legal Perspective." *Journal of Central Banking Law and Institutions* 2, no. 2 (2023): 347-372; Maulana, Ikhwan Nul Yusuf, Elisatris Gultom, and Sudaryat Sudaryat. "Talent Pool on The Appointment of Directors of PLN (Persero) Viewed from Good Corporate Governance." *Unnes Law Journal* 6, no. 2 (2020): 225-258.

2 Aryani, Fajar Dian. "Kriminalisasi dan Penegakan Hukum Tindak Pidana Korporasi." *SALAM: Jurnal Sosial dan Budaya Syar-i* 10, no. 3 (2023): 833-842; Baiquni, Muhammad Iqbal, et al. "Criminalization Arrangements for Corporations (Comparative Study of Indonesia and Australia)." *Unnes Law Journal* 9, no. 2 (2023): 489-508.

sanctions. An act is criminalized partly because the act is detrimental. Losses can be individual losses, social losses, state losses or environmental losses.[3]In this case, corporate criminalization is an effort to uphold the law and strengthen law enforcement against environmental crimes committed by corporations. Criminalization actions can include legal prosecution against companies, criminal sanctions against individuals involved in activities that damage the environment, as well as law enforcement against corporations that violate environmental regulations.

Actions that harm the environment need to be criminalized because they rob, deny or eliminate the rights of current and future generations to enjoy a clean and healthy environment, as well as damage the ecological function and health of the ecosystem in many ways. The resulting environmental losses can be in the form of (threat) damage and degradation of ecosystems, extinction of species, weather changes and global warming, environmental pollution, and animal deaths. When the environment is damaged or polluted so that it is difficult or even impossible to repair, there is a high possibility that future generations will experience the impacts.[4]

Even though criminalization based on environmental losses is important, the developing theoretical discourse on criminalization is still general in nature and has not touched on the characteristics of environmental offenses. In the context of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), the need for criminalization based on environmental losses is based on several reasons. Firstly, one of the considerations for the creation of this Law is based on the fact that the declining quality of the environment has threatened the continuity of human life and other living creatures, so it is necessary to carry out serious and consistent protection and management of the environment by all stakeholders. Second, the main aim of the law is to prevent environmental losses in the form of damage or pollution. These objectives include, among other things,

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[3] Ali, Mahrus. "Model Kriminalisasi Berbasis Kerugian Lingkungan dan Aktualisasinya dalam Undang-Undang 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup." *Bina Hukum Lingkungan* 5, no. 1 (2020): 21-39.

[4] Mahardika, Ega Rijal, and Muhammad Azhary Bayu. "Legal Politics of Indonesian Environmental Management: Discourse Between Maintaining Environmental Sustainability and Economic Interests". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (2020): 1-28; Rachmat, Niken Aulia. 2022. "Hukum Pidana Lingkungan di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup". *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 188-209; Purnaningtyas, Maria Ulfa Desvita. "Correlation Between Enforcement of Environmental Law and Sustainable Development Goals in the Era of Society 5.0". *Semarang State University Undergraduate Law and Society Review* 3, no. 2 (2023).

protecting the territory of the Indonesia from environmental pollution and/or damage, guaranteeing safety, health and human life, guaranteeing the continuity of life of living creatures and preserving the ecosystem, and guaranteeing the fulfillment of justice for present and future generations (Article 3 UUPPLH). Third, instruments for preventing pollution and/or environmental damage which include Strategic Environmental Studies (KLHS), spatial planning, environmental quality standards, standard criteria for environmental damage, AMDAL, Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) , permits, environmental economic instruments, environmental-based laws and regulations, environmental-based budgets, environmental risk analysis, environmental audits, and other instruments as needed (Article 14 of the PPLH Law) are aimed at preventing environmental losses. Therefore, it is logical that criminalization in the PPLH Law is oriented towards environmental losses.[5]

Research on corporate criminalization in environmental crimes aims to understand the importance of corporate criminalization as an effort to protect the environment and society, as well as to identify challenges and obstacles in implementing corporate criminalization.[6] Apart from that, research can also discuss the effectiveness and efficiency of corporate criminalization in enforcing the law and encouraging companies to be responsible for the environmental impacts caused by their activities. Even further, the criminalization of corporations in environmental cases is an issue that has become increasingly prominent in recent years. In the modern era filled with increasingly developing industrial and business activities, the negative impact on the environment is becoming increasingly significant. In many cases, companies violate environmental laws by ignoring the environmental consequences of their operational activities. Therefore, stricter legal action

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[5] *See also* Arsyiprameswari, Natasya, et al. "Environmental Law and Mining Law in the Framework of State Administration Law." *Unnes Law Journal* 7, no. 2 (2021): 347-370; Wijayanto, Adi, Hatta Acarya Wiraraja, and Siti Aminah Idris. "Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement." *Unnes Law Journal* 8, no. 1 (2022): 105-132; Nyekwere, Empire Hechime, et al. "Constitutional and Judicial Interpretation of Environmental Laws in Nigeria, India and Canada." *Lex Scientia Law Review* 7, no. 2 (2023): 905-958; Aji, Adiguna Bagas Waskito, et al. "Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases." *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020): 57-72.

[6] Nurhasanah, Sindy Riani Putri, and Ulil Afwa. "Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan pada Holding Company BUMN." *Indonesia Law Reform Journal* 1, no. 3 (2021): 303-317; Ali, Mahrus. "Kebijakan Penal Mengenai Kriminalisasi dan Penalisasi terhadap Korporasi (Analisis terhadap Undang-undang bidang Lingkungan Hidup)." *Pandecta Research Law Journal* 15, no. 2 (2020): 261-272.

against companies that damage the environment is an urgent need to protect natural resources, biodiversity, and public health and welfare.

Corporate criminalization in the environmental context refers to the use of criminal law to enforce environmental rules and regulations against companies that commit environmental violations. This criminalization action can involve legal prosecution against companies, criminal sanctions against individuals involved in activities that damage the environment, as well as law enforcement against corporations that violate environmental regulations. This approach aims to provide a deterrent effect to companies and individuals who commit environmental violations, as well as encouraging companies to be responsible for the environmental impacts caused by their activities.

Corporate criminalization in environmental cases can be seen from several factors which are the main reasons why this issue is becoming increasingly significant.[7] First, the negative impact on the environment due to industrial and business activities has increased dramatically in recent decades. Companies are often involved in activities that damage the environment, such as dumping hazardous waste, water and air pollution, and excessive exploitation of natural resources. As a result, there is significant environmental damage, including loss of natural habitat, damage to ecosystems, and reduction in air, water and soil quality. These impacts can have a negative impact on human health, including increased disease, economic losses, and threats to human survival and biodiversity.

Second, public awareness and pressure from environmental advocacy groups on environmental protection is increasing. Society is increasingly aware of the importance of a healthy and sustainable environment, and demands companies be responsible for the environmental impacts they produce. Environmental advocacy groups, such as environmental NGOs and local communities, are increasingly active in fighting for environmental rights and pressuring governments and companies to act responsibly.

Several previous studies as a reference for the author's research regarding corporate criminalization in cases of environmental damage have revealed several interesting novelties, including in the journal Environmental Law and Policy in 2023 by an international research team consisting of environmental law and environmental science experts. The research results show that there are several significant novelties in the criminalization of corporations in cases of environmental damage. First, there is an increase in the use of criminalization measures as a response to environmental violations by companies, secondly this research shows that the narrative in cases of corporate

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7 Susanti, Erna, and Khristyawan Wisnu Wardana. "Tanggung Jawab Korporasi dalam Pencemaran Lingkungan Hidup." *Risalah Hukum* 1, no. 2 (2005): 20-25.

criminalization in environmental damage has changed from a focus on companies as legal entities, to recognizing the importance of the role of individuals in companies who are responsible for policies and practices that damage the environment.

Meanwhile, a distinct study titled "*Corporate Crime and the Criminalization of Environmental Harms*" delves into the realm of corporate criminalization with a focus on environmental damage. This article scrutinizes the role of criminal law in addressing corporations implicated in actions causing harm to the environment and critically evaluates the efficacy of corporate criminal penalties in deterring environmental violations.[8]

Concurrently, additional research titled "*Corporate Criminal Liability for Environmental Offenses: A Legal and Criminological Analysis*" undertakes a comprehensive legal and criminological examination of corporate criminal responsibility in cases involving environmental violations. While these preceding studies have broadly explored and analyzed corporate responsibility, none have specifically investigated legal reforms in Indonesia concerning the model of corporate criminalization in the context of environmental damage.[9]

In the context of the study's background, the research aims to explore three key questions. Firstly, an examination will be conducted to understand how the criminalization of corporations in cases of environmental damage is regulated within the legal framework of Indonesia. The study will then delve into an analysis of the mechanisms employed in the enforcement of laws related to environmental damage by corporations in Indonesia. Finally, the research will explore the various obstacles that impede the effective enforcement of laws addressing environmental crimes committed by corporations in the Indonesian context.

Method

This research is normative legal research because what is studied is legal theory and norms in the legal system by focusing on theoretical discourse regarding criminalization models that are oriented towards environmental losses both theoretically and actualized in the PPLH Law. The approach used is a

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[8] Bintang, Tri Baskoro. "Pertanggungjawaban Hukum Pidana Terhadap Kejahatan Korporasi Ditinjau dari Undang-Undang Perseroan Terbatas." *National Journal of Law* 6, no. 1 (2022): 774-789.

[9] Lubis, Muhammad Ansori, and Muhammad Siddiq. "Analisis Yuridis Pertanggungjawaban Pidana Terhadap Korporasi Atas Pengrusakan Hutan." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 1 (2021): 35-65.

conceptual and statutory approach.[10]The conceptual approach refers to the conceptual (theoretical) elements of criminalization and the characteristics of environmental criminal law which form models of environmental loss-based criminalization, while the legislative approach is directed at actions that are criminalized in the PPLH Law.[11]

The legal materials in this research, which were collected through literature study, consist of primary legal materials and secondary legal materials. The primary legal material is the PPLH Law, especially the formulation of offenses regulated from Article 98 to Article 115, while the secondary legal material is related to literature that specifically talks about criminalization, characteristics of environmental criminal law, and criminalization based on environmental losses. The legal material collection technique involves collecting primary legal material obtained from relevant informants as well as collecting legal material that is relevant to various applicable regulations. Apart from that, secondary legal materials are also used in the form of other relevant documents.

Analysis of legal materials is carried out by connecting the rules in the relevant law with their application in resolving the issues that are the focus of the research. The legal material is then analyzed descriptively qualitatively through reducing the legal material, presenting the legal material, and drawing conclusions.

Regulatory Framework for Corporate Criminalization in Environmental Cases in Indonesia

Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia explains that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services. Thus, a healthy and good living environment is the right of every Indonesian citizen. So environmental pollution is a crime that injures people's rights to live in a safe environment and infringes the rights of the next generation to inherit a healthy environment. Article 66 of Law No. 23 of 1997 concerning Environmental Management (hereinafter referred to as the PLH Law) regulates guarantees for

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[10] Negara, Tunggul Ansari Setia. "Normative Legal Research in Indonesia: Its Originis and Approaches." *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1-9; Disemadi, Hari Sutra. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (2022): 289-304.

[11] *See* Mader, Luzius. "Evaluating the Effects: A Contribution to the Quality of Legislation." *Statute Law Review* 22, no. 2 (2001): 119-131.

every person who fights for their environmental rights that every person who fights for a good and healthy environment cannot be prosecuted either criminally or civilly. However, environmental protection remains a part of development that is difficult to realize, even though many corporations are responsible for destroying the environment.

The regulation of corporate criminalization in Indonesian environmental cases was influenced by the Stockholm Declaration of 1972. The principles of the Stockholm Declaration give humans the right to use the environment but also provide an obligation for humans to safeguard, protect and preserve it or what is called environment oriented.[12]As a country that also signed the Stockholm Declaration, Indonesia made laws and regulations as a form of dedication to the Stockholm Declaration through Law No. 4 of 1982 concerning Basic Provisions for Environmental Management (hereinafter referred to as the KPPLH Law). The KPPLH Law was then revoked and replaced by Law No. 23 of 1997 concerning Environmental Management. Then in October 2009 the government issued Law No. 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the PPLH Law).

The development of the formulation of criminal responsibility in Indonesian law has recognized corporations as legal subjects that can be held accountable. Corporate criminal liability is a breath of fresh air in environmental crimes, considering that corporations have the authority to regulate, control and order anyone within them to commit criminal acts. The role of corporations is very strategic in managing the environment so that they have a great opportunity to maintain and even become perpetrators of environmental crimes. This is in accordance with the concept that corporations are considered responsible for physical actions carried out by their shareholders, management, agents, representatives or employees.[13]

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[12] Husin, Sukanda. *Penegakan Hukum Lingkungan: Edisi Revisi*. (Jakarta: Sinar Grafika, 2020).

[13] Rodliyah, Rodliyah, Any Suryani, and Lalu Husni. "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) dalam Sistem Hukum Pidana Indonesia." *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 191-206. For further discussion concerning some cases on criminal responsibility in Indonesia, *also see* Muhtada, Dani, and Ridwan Arifin. "Penal Policy and the Complexity of Criminal Law Enforcement: Introducing JILS 4 (1) May 2019 Edition." *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 1-6; Rahayu, Hartoto Suci Unknown, and Diana Unknown Lukitasari. "The Concept of Corporate Criminal Liability in the Law on Information and Electronic Transactions." *IJCLS (Indonesian Journal of Criminal Law Studies)* 6, no. 1 (2021): 83-92; Wibowo, Muhtar Hadi. "Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia)." *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 213-236; Hidayatuzzakia, Hana, Ali Masyhar Mursyid, and Cahya Wulandari. "Punishment of the

Through the PPLH Law article 1 point (32) it is stated that the meaning of "*every person*" in the Law is an individual or business entity, whether a legal entity or not. So that through this law corporations can be criminalized if an environmental crime occurs, including the company leader (factual leader) or other order giver (instruction giver) within the corporate environment.[14]

Article 116 of the PPLH Law emphasizes corporate responsibility for environmental crimes. If an environmental crime is committed by, for or on behalf of a business entity, criminal charges and criminal sanctions are imposed on the business entity and/or the person who gave the order to commit the crime or the person who acted as the leader of the activity in the crime. Thus, if the perpetrator of an environmental crime is a corporation, then criminal sanctions are imposed on the corporation itself as well as on the leadership and person responsible for the activity.[15]

To determine a corporation as a perpetrator of an environmental crime, one can be guided by whether the action was carried out in order to carry out its duties or achieve corporate goals. According to Article 4 of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, that in imposing a crime on a corporation the judge can assess the corporation's mistakes in 3 (three) things, namely;

a. Corporations can gain profits or benefits from criminal acts carried out for the benefit of the corporation;
b. Corporations allow criminal acts to occur; or
c. Corporations do not take the necessary steps to prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.

Therefore, ignoring corporate obligations towards the environment can be a criminal offense. Likewise, if a corporation does not prevent possible environmental damage as a result of corporate operations, it can also be categorized as an environmental crime.

If a corporation commits an environmental crime in accordance with applicable law, it can be held criminally liable. In this case, according to Mardjono Reksodiputro, there are three models of corporate criminal responsibility, namely[16]:

1) Corporate managers as creators and administrators are responsible

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Kanjuruhan Commotion due to Negligence from the Perspective of Causality Theory." *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 2 (2023): 123-144.

14 Husin, *Penegakan Hukum Lingkungan: Edisi Revisi.*

15 Ruslan Renggong, *Hukum Pidana Lingkungan.* (Jakarta: Kencana, 2018). *See also* Niessen, Nicole. *Environmental Law in Development: Lessons from the Indonesian Experience.* (London: Edward Elgar Publishing, 2006).

16 Renggong, *Hukum Pidana Lingkungan.*

2) Corporations as responsible creators and managers of corporations
3) Corporations as makers and also as responsible.

If the corporate management is the creator and responsible administrator of the corporation, this means that in their duties the corporate management is burdened with an obligation which is a representation of the corporation's obligations. If the corporate management does not carry out its obligations, the management is responsible or will be punished. The second model, if the corporation is the maker, the management is responsible. This is related to the corporation's articles of association that what the corporation does is what all the equipment in the corporation does. So the person who leads the corporation is considered responsible for criminal acts even if he knows or does not know about the act. The third model, the corporation as the maker and as the responsible party. In certain cases, the management only determines the management as the party that can be held accountable, but the modernization of corporate law itself is able to ensnare corporations as perpetrators of criminal acts. This considers that punishing the management alone is not enough to stop repeated acts so that it is necessary to punish the management and the corporation.[17]

Punishment in the PPLH Law adheres to the principle of limited *ultimum remedium. Ultimum remedium* in the case of environmental crimes means that criminal law is a last legal remedy which is basically aimed at imposing prison sentences or fines as a deterrent effect on perpetrators of environmental pollution or destruction. The PPLH Law adheres to a limited *ultimum remedium* principle, this is because the *ultimum remedium* principle can only be applied in a limited way to formal offenses such as violations of waste water quality standards or emissions.[18] Likewise, in material offenses, the principle of *primum remedium* applies, criminal law as the main means of enforcing environmental crime laws.

Article 100 of the PPLH Law as an example of a formal offense states that;

1) Any person who violates waste water quality standards, emission quality standards or nuisance quality standards will be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 3,000,000,000.00 (three billion rupiah).
2) The criminal act as intended in paragraph (1) can only be imposed if the administrative sanctions that have been imposed are not complied with or the violation is committed more than once.

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17 Saleh, Roeslan. Tentang Tindak-Tindak Pidana dan Pertanggungjawaban Pidana. (Jakarta: BPHN, 1984).

18 Husin, *Penegakan Hukum Lingkungan: Edisi Revisi.*

Based on these legal provisions, new criminal law can be applied to perpetrators, both individuals and corporations, if administrative sanctions are violated or in other cases, namely if the violation is committed more than once, new criminal sanctions can be imposed on the perpetrator.

Material offenses in the PPLH Law are regulated in Articles 98 and 99, so that punishment for this offense requires proof of the consequences of actions in terms of environmental pollution or destruction. It was previously stated that in material offenses the PPLH Law applies the principle of *primum remedium*, so that crimes against the environment do not depend on or await violations of administrative sanctions or what is called AIC, namely administrative independent crime.[19]

Based on article 98 of the PPLH Law, actions carried out intentionally that exceed ambient air quality standards, water quality standards, sea water quality standards or standard criteria for environmental damage are punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten years).) as well as a minimum fine of IDR 3,000,000,000.00 (three billion rupiah) and a maximum fine of IDR 10,000,000.00 (ten billion rupiah). If the act causes the victim to be seriously injured or die, he is threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 5,000,000,00.00 (five billion rupiah) and a maximum of (fifteen billion rupiah). Likewise, if the act occurs due to negligence, it is punishable by imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years with a minimum fine of IDR 1,000,000,000.00 (one billion rupiah) and a maximum fine of IDR 3,000,000,000. .00 (three billion rupiah). However, the criminal sanctions imposed in the administration are included in non-tax state revenues (PNBP) so they cannot be used to improve or restore the environment.[20]On the other hand, the PPLH Law does not regulate if the fine is not paid by the perpetrator, but refers to Article 30 of the Criminal Code as the *lex generalis*, then if the fine is not paid it will be replaced with substitute imprisonment which cannot exceed 8 (eight) months. Therefore, this becomes a weakness in the criminalization of corporations in environmental crimes.

Corporations as perpetrators of environmental crimes are not only threatened with criminal sanctions, but there are additional penalties in the form of confiscation of the profits of the crime, closure of all or part of the business premises, repairs resulting from the crime, obligation to carry out what was neglected without rights or placing the company under a maximum

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19 Husin.

20 Daniel, Deni, Azam Hawari, and Marsya Mutmainah Handayani. "Reorientasi Penegakan Hukum Pidana Lingkungan Hidup melalui Perjanjian Penangguhan Penuntutan." *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 72-96.

of 3 (three) safeguards year. This additional punishment is accessory in nature, that is, it follows the main punishment, so it cannot stand alone or be imposed without the main punishment.[21]

The PPLH Law as a legal umbrella for environmental crimes is still not in favor of environmental restoration, so it requires a criminal law policy as a response to the community's need for legal certainty and protection for environmental crimes. Law No. 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, as a form of legal policy in the legislative sector, revokes and amends several provisions in the PPLH Law. One of them is Article 102 PPLH which states that managing B3 waste without a permit is punishable by imprisonment or a fine. In this way, parties who use B3 waste without permission and cause environmental pollution are no longer threatened with punishment and even have the freedom granted by the law itself.[22]Apart from that, Article 82 B of this Law also deletes Article 110 concerning AMDAL preparers who do not have a competency certificate, which originally in the PPLH Law was threatened with imprisonment and a fine, but in this law only administrative sanctions are imposed. Article 82 B determines that environmental pollution or damage caused by negligence and does not result in danger is only subject to administrative sanctions.

Corporations as legal subjects who can be held accountable for their actions in terms of being perpetrators of environmental crimes can be sentenced together with their leaders and those giving orders in these criminal acts. However, criminal penalties against corporations cannot be applied directly depending on the type of offense violated as in the PPLH Law which adheres to a limited *ultimum remedium.* On the other hand, the PPLH Law is not yet oriented towards environmental restoration. Because environmental restoration is only an additional crime, even though it should be the main crime considering that losses from environmental crimes have the main impact on environmental damage and the availability of a healthy environment for the next generation. Likewise, existing criminal law policies do not support environmental protection with the deletion of several articles in the PPLH Law, such as managing B3 waste without a permit. The atmosphere in the existing criminal law policy prioritizes administrative sanctions by changing the criminal provisions in several articles in the PPLH Law.

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21 Renggong, *Hukum Pidana Lingkungan.*

22 Ajie Ramdan, "UU Cipta Kerja Melindungi Pengelolaan Limbah B3 Tanpa Izin dari Pemidanaan", *HukumOnline,* retrieved from https://www.ukumonline.com/berita/a/uu-buat-kerja-melindungi-pengelolaan-limbah-b3-cepat-izin-dari-pemidanaan-lt64db257b34ae0/?page=1

Law Enforcement in Cases of Environmental Damage by Corporations in Indonesia

Environmental law enforcement is an integral part of the "*legislative framework*" and the final stage of the "*regulatory chain*". The theme of environmental law enforcement has attracted public attention, including being the main topic at the "*Fifth International Conference on Environmental Compliance and Enforcement*" in Monterey, California, United States (USA), 16-20 November 1998. This conference aims to provide a basic understanding of environmental law enforcement and develop it in cooperation between nations, especially regarding "*transboundary compliance issues*". The term "*environmental law enforcement*" ("*environmental law enforcement*" or "*handhaving van milieurecht*") has an understanding that contains the character of integration across legal disciplines (sciences).[23]

GA Biezeveld defines that environmental law enforcement can be defined as the application of legal governmental powers to ensure compliance with environmental regulations by means of:

a. administrative supervision of the compliance with environmental regulations (inspection) (mainly preventive activity);
b. administrative measures or sanctions in case of non-compliance (corrective activity);
c. criminal investigation in cases of presumed offenses (repressive activity);
d. criminal measures or sanctions in case of offenses (repressive activity);
e. civil action (law suit) in case of (threatening) non-compliance (preventive or corrective activity).

Environmental law enforcement can be defined as the application of a government's legal powers to ensure compliance with environmental regulations by:[24]

a. An administrative supervision of compliance with environmental regulations (inspection) (mainly preventive activities);
b. Administrative actions or sanctions in cases of non-compliance (corrective activities);
c. Criminal investigations in cases of alleged violations (repressive activities);
d. Criminal action or sanctions if a violation occurs (repressive activity);

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[23] Butar, Franky Butar. "Penegakan Hukum Lingkungan di Bidang Pertambangan." *Yuridika* 25, no. 2 (2010): 151-168.

[24] Purwendah, Elly Kristiani, Agoes Djatmiko, and Elisabeth Pudyastiwi. "Problematika Penegakan Hukum Lingkungan di Indonesia." *Jurnal Pacta Sunt Servanda* 4, no. 1 (2023): 238-249.

e. Civil action (lawsuit) in case of (threatened) non-compliance (preventive or corrective activity)

One way of enforcing environmental law in the context of controlling environmental pollution can be done through Environmental Law Enforcement through Criminal Law Instruments.[25]Enforcement of criminal law is the *ultimum remedium* or last legal effort because the aim is to punish the perpetrator with prison sentences and fines. Criminal law enforcement does not function to improve a polluted environment. However, enforcement of this criminal law can create a very effective deterrent factor. Therefore, in practice criminal law enforcement is always implemented selectively.

Imposing criminal sanctions on environmental polluters and destroyers in terms of the relationship between the state and society is very necessary because the aim is to save society (social defense) and the environment from prohibited acts (*verboden*) and required or obligatory acts (*geboden*) that are carried out. by development actors. Specifically, the punishment in question aims to:

a. Preventing crimes or unwanted actions or wrong actions from occurring
b. Imposing appropriate suffering or retribution on the offender

An investigation to determine whether an act that pollutes (or damages) the environment can be punished requires the formulation of an "environmental offense (environmental pollution)" based on the "principle of legality" as stated in Article 1 paragraph (1) of the Criminal Code (KUHP): "*nullum delictum nulla poena sine praevia lege poenali*". UUPPLH regulates "criminal provisions" in Articles 97-120, however, UUPPLH does not formulate the meaning of "environmental offenses" ("*milieudelicten*").[26]The problem of formulating environmental offenses for environmental pollution can be resolved by understanding the juridical meaning of environmental pollution (environment) and the formulation of criminal sanctions. Based on Article 1 point 14 of the UUPPLH and Articles 97-120 of the UUPPLH, the definition of an environmental offense of environmental pollution can be formulated: An (environmental) offense of environmental pollution is an act committed intentionally or due to negligence which results in the entry or importation of living creatures, substances, energy and/ or other components into the environment by human activities so that they exceed established

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[25] Sufiyati, Sri, and Munsyarif Abdul Chalim. "Kebijakan Hukum Pidana dalam Upaya Menanggulangi Tindak Pidana Lingkungan Hidup (Studi Kasus Penanggulangan Limbah Bahan Berbahaya dan Beracun Padat Sisa dari Pmbakaran Batubara Mesin Boiler)." *Jurnal Hukum Khaira Ummah* 12, no. 3 (2017): 457-466.

[26] Hikmah, Muftia Nisaul, and Wartiningisih Wartiningsih. "Efektivitas Penerapan Pasal 66 Undang-Undang Nomor 32 Tahun 2009 terhadap Perlindungan Aktivis Lingkungan." *Simposium Hukum Indonesia* 1, no. 1 (2019): 176-184.

environmental quality standards. In short, it can be said that the environmental offense of environmental pollution is: "an act carried out intentionally or through negligence that causes environmental pollution". Referring to Article 97120 of the PPLH Law, it is known: "the subject of an environmental offense of environmental pollution" who bears criminal responsibility is "every person" (both individual and legal entity). The formulation of an environmental offense has two basic elements: "act" and "consequences" These two elements can be used as guidelines for qualifying environmental pollution offenses as "material offenses" or "formal offenses". Material offenses are oriented to the constitutive "consequences", while formal offenses emphasize the "action".

Determining an environmental offense as a material offense or a formal offense carries legal consequences related to the ability to "present evidence" and "determine the causal relationship (causality)" between polluters' actions and environmental pollution. In the formulation of material offenses, more complicated proof is required than with the formulation of a formal offense which does not require proof of the consequences of the polluter's actions. Formal offenses do not prove the consequences but (only) prove (the occurrence of) the "action" (doing or not doing). The substance of the proof is oriented towards the presentation and evaluation of facts to base the construction of the judge's decision in an appropriate manner. convincing. The main function of investigating and prosecuting environmental offenses (environmental pollution) and the court process is to examine the facts and not the law. The truth of the facts must be found in the criminal justice mechanism so that the judge can choose the right law (*in abstracto*) to make a decision (*in concreto*) which is "executable".

Proof in the environmental offenses court mechanism for environmental pollution is mandatory on the basis of: Law no. 14 of 1970 concerning Basic Provisions of Judicial Power jo. Law no. 35 of 1999 concerning Amendments to Law no. 14 of 1970 concerning Basic Provisions of Judicial Power (Judicial Power Law) and Law no. 8 of 1981 concerning Criminal Procedure Law (KUHAP). The types of evidence that are valid according to Article 6 paragraph (2) of the Judicial Power Law and Article 183 of the Criminal Procedure Code are regulated in Article 184 of the Criminal Procedure Code, namely: witness statements, expert statements, letters, instructions and defendant statements.

The role of investigators in environmental crimes is very important, because they are tasked with collecting facts and evidence which are often scientific in nature (*scientific*), especially for environmental pollution in urban areas which occurs cumulatively. The idea of presuming a causal relationship is a creative discovery to overcome the problems of proving (and) causality in

environmental offenses (environmental pollution) which pose an immediate danger to life and public health. The complexity of evidence and causality by establishing the principle of "*presumption of causation*" is a legal finding that is worth considering in the context of drafting the Draft Criminal Code Bill which has been prepared by the Department of Justice and Human Rights. It is hoped that this step can be taken immediately based on the consideration that weaknesses in proving and determining the causality of environmental pollution offenses have fatal juridical consequences: "acquittal" or "conviction (application of criminal sanctions) without evidence".[27]

Punishment of environmental polluters is a reaction to environmental offenses which philosophically aims to provide legal protection for the quality of the environment for society. Criminal sanctions are less effective in controlling environmental pollution considering that they only provide sorrow to the doer and not to the deed. The various formulations of criminal sanctions require a lot of thought in order to effectively implement punishment. Criminal liability for environmental offenses can be imposed on individuals or legal entities. Criminal sanctions which are usually individual (personal) in nature can ultimately also be applied to legal entities that commit environmental offenses involving environmental pollution.

The criminal liability of "legal entities" is in line with the concept of legal entities as legal subjects. Meijers stated: "legal personality ... includes something that supports rights and obligations". Logemann is of the opinion: "a legal entity is a *personifikatie*, a *bestendigheid* (embodiment, incarnation) of rights and obligations. Punishment of legal entities is carried out by imposing criminal sanctions "fines" and for individual managers of legal entities criminal sanctions are applied in the form of imprisonment (or fines). Therefore, the element "whoever" in environmental offenses based on the PPLH Law contains the content that the "person" who is the "perpetrator of the offense" includes "individuals" and "legal entities". Efforts to enforce environmental law through criminal law are how the three main problems in criminal law are outlined in laws which more or less have a role in carrying out social engineering, namely which includes the formulation of criminal acts, criminal liability and sanctions. both criminal and disciplinary. In accordance with the aim that is not only a tool of order, environmental law also contains the aim of societal renewal (social engineering). Law as a tool of social engineering is very important in environmental law.

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[27] Hamid, Muhammad Amin. "Penegakan Hukum Pidana Lingkungan Hidup dalam Menanggulangi Kerugian Negara." *Legal Pluralism: Journal of Law Science* 6, no. 1 (2016): 88-117; Arifin, Ridwan, and Siti Hafsyah Idris. "In Dubio Pro Natura: in Doubt, should the Environment Be a Priority? A Discourse of Environmental Justice in Indonesia." *Jambe Law Journal* 6, no. 2 (2023): 143-184.

The criminal justice system is a judicial network that uses material criminal law, formal criminal law and criminal implementation law. However, this institution is only seen in a social context. A nature that is too formal if based solely on the interests of legal certainty will bring disaster in the form of injustice. The criminal justice system is a working mechanism for dealing with crime using a basic systems approach. Furthermore, according to Mardjono Reksodiputro, the criminal justice system is a crime control system consisting of police institutions, prosecutors, courts and prisons for convicts. These components are involved and collaborate in tackling environmental crimes and violations, and are also responsible for their failure to tackle environmental crimes. These four components must realize the goals of the criminal justice system itself.[28] According to Marjono Reksodiputro, the objectives of the criminal justice system can be formulated as follows:

1. Prevent people from becoming victims of crime.
2. Resolve crime cases that have occurred so that the public is satisfied that justice has been served and the guilty have been punished.
3. Ensure that those who have committed crimes do not repeat their crimes again.

These three components are expected to work together to form what is known as an "integrated criminal justice system" interconnected in a system called the "Criminal Justice system", which consists of police, prosecutor's office, court and correctional institutions sub-systems. Between one sub-system and another there must be a connection like a connected vessel, because if there is a conflict in one sub-system it will have an impact on other sub-systems. Enforcement of criminal law in the environmental sector has currently not achieved the expected goals. One of the causes of this failure is the lack of synchronization, coordination, simultaneity and harmony culturally, structurally and substantially in the criminal justice system. According to Lawrence M. Friedman, the legal system covers a very broad field, which includes substance, structure and culture. If it is related to the Criminal Justice System, according to Muladi, these three components, namely substance, structure and culture, must be integrated, meaning there must be synchronization or unison and harmony.[29]

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[28] Reksodiputro, Mardjono. *Menyelaraskan Pembaruan Hukum*. (Jakarta: Komisi Hukum Nasional, 2009).

[29] Nagara, Grahat, et al. "Persoalan Struktural dalam Politik Penegakan Hukum Sumber Daya Alam dan Lingkungan Hidup." *Integritas: Jurnal Antikorupsi* 5, no. 2-2 (2019): 65-74.

Obstacles in Law Enforcement for Environmental Crimes by Corporations in Indonesia

One of the crucial problems in this country is the issue of law enforcement. The problem that arises is whether law enforcement in an effort to realize the supremacy of law agenda will be achieved properly. This depends on various constraints. There are many obstacles related to law enforcement. The obstacles faced by law enforcement for environmental crimes are as follows:[30]

1. Legal factors

As previously explained, Law No. 32 of 2009 concerning Environmental Protection and Management has several weaknesses in its formulation. There are various acts that qualify as criminal acts but it is difficult to measure or determine that an environmental crime has occurred. As one example, actions that result in exceeding water, air quality standards and environmental damage standards are punishable by criminal law. However, the benchmarks or criteria for determining whether the quality standards for environmental damage have been exceeded are not fully regulated in subsequent regulations or implementing regulations.

This problem has an impact on the process of implementing law enforcement, because in terms of the formulation of threatening the act with a crime, law enforcers process violators using criminal law regulations. It turns out that after the case is underway, law enforcement experiences stagnation, because investigators have difficulty proving the elements of the offense formulated. in the Law. Ambiguity in legislative policies will automatically have an impact on law enforcement in the field. Not a few investigators from the Central Java Regional Police and PPNS find it difficult to resolve air, water and sea water pollution cases due to the absence of regulations that determine standard criteria regarding air, ambient water and sea water pollution. If in terms of legal norms alone it causes debate, it will become a problem that will result in unresolved enforcement of environmental criminal law. So far, in Central Java, such conditions often occur, so investigators really need to consider the direction of law enforcement, whether to bring it into the criminal or administrative realm because of the dualistic nature of the rules.

2. Law enforcement human resources constraints are still limited

It cannot be denied that human resources constraints for law enforcers are a factor in the ineffective enforcement of environmental criminal law. Especially in regional areas, it cannot be said that law enforcers have mastered the ins and outs of environmental law, and even the introduction of

[30] Reksodiputro, *Menyelaraskan Pembaruan Hukum.*

environmental law is still lacking. This can only be overcome with education and training, in addition to the person having to learn on his own by reading books, attending scientific meetings, such as seminars and so on. In addition, there are no investigators or public prosecutors specifically for environmental crimes.

3. Facilities and infrastructure

Enforcement of environmental criminal law is a process that is carried out through various stages that require a long time and require facilities and infrastructure that can support these enforcement activities. Thus far, the enforcement of environmental criminal law has encountered analogous obstacles to those observed in various specialized criminal acts, particularly pertaining to challenges in facilities and infrastructure. The impediments arising from facility-related issues frequently hinder the seamless progression of addressing environmental crimes. However, until now the Central Java Environmental Agency (DLH) does not have adequate facilities to support the investigation and prosecution process. Some of the problems faced related to facilities and infrastructure include:[31]

1) Does not have its own environmental laboratory. In pollution cases, for example, DLH must collaborate with private parties to determine the waste fluid that causes water pollution.
2) There are very limited vehicles available in the field, vehicles as sufficient means are needed by investigators to inspect locations where alleged environmental crimes by corporations have occurred. It is not uncommon in practice for investigators to have to directly inspect the location of damage or pollution which has quite rough terrain and is difficult to pass by ordinary vehicles. You need a special vehicle to get to the location faster and this facility has not been facilitated until now.
3) Civil Servant Investigators (PPNS) have the authority to conduct searches of bodies, clothing, rooms and/or other places suspected of being places where criminal acts have been committed, as well as the authority to arrest and detain perpetrators of environmental crimes as intended in Article 94

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[31] Suryati, Siti. "Penegakan Hukum Terhadap Korporasi dalam Tindak Pidana Lingkungan di Wilayah Provinsi Jawa Barat Dihubungkan Dengan Upaya Pemulihan Lingkungan Hidup." *Syiar Hukum: Jurnal Ilmu Hukum* 16, no. 2 (2018): 207-232; Dewantara, Antonius Mahendra, and Dika Kirana Larasati. "Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 237-64; Martitah, Martitah, and Duhita Driyah Suprapti. "Pengembangan Potensi Kelompok Usaha Bersama Nelayan Berwawasan Konservasi dan Hukum di Kecamatan Kedung Kabupaten Jepara". *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement)* 1, no. 2 (2019): 184-92.

paragraph (2). However, apart from the limited number, PPNS also do not receive prior military guidance and training and are not equipped with adequate weapons like National Police investigators. Although in paragraph (3) PPNS is given the authority to coordinate with National Police investigators. However, in practice, PPNS investigators need speed in disclosing environmental crimes, so if they have to coordinate first with Polri investigators, it will cause a slowdown in disclosing cases.

The existence of facilities has an important position related to the acceleration of investigations carried out by PPNS, the Police and the Prosecutor's Office. Without being supported by adequate facilities and infrastructure, it is certain that enforcement of environmental criminal law against corporations in Central Java will not obtain maximum results and will continue to experience obstacles. For example, the existence of laboratories and vehicle facilities has a large influence so that allegations of environmental pollution or damage by corporations can be identified quickly and with certainty.

4. Environmental action is not yet a priority

Environmental action has not become a priority compared to other cases, for example theft, murder, corruption and others. Due to evidence, determining the causal relationship between the act of pollution and the victim of an environmental crime involving pollution requires experts and a special laboratory. Although Article 96 of Law No. 32 of 2009 already regulates the Evidence Article which states: Valid evidence in prosecution for environmental crimes consists of:

a. Witness statements
b. Expert testimony
c. Letter
d. Instruction
e. Defendant's statement; and/or
f. Other evidence, including evidence regulated in regulations legislation.

Article 183 of the Criminal Procedure Code clearly determines the function of evidence as one of the conditions for a judge to impose a crime. Because of its function in collecting strong and valid evidence, investigators need to be careful because the techniques for collecting and determining evidence in environmental crimes are very difficult and complex.

5. Barriers to coordination between agencies in handling environmental crime

Coordination between police investigating agencies, prosecutors and Civil Servant Investigators (PPNS) in environmental crimes has not gone well.

Many criminal acts in the environmental sector are usually related to regulation or related to violations of the policies of administrative authorities which are usually preventive in nature, and related to the prohibition of acting without permission. This gives rise to the opinion that the authority of criminal law to carry out further investigations and examinations will only be possible if other means of law enforcement have been attempted and the subsidiarity of criminal law has failed. There are psychological differences between supervision carried out by supervisory officials (handling in the administrative field) and handling through criminal law means, including:

1) Administrative government officials do not understand much about criminal law
2) Administrative government officials work with the aim of increasing government cooperation with the business world, so that handling
3) through criminal law means is considered something that is disturbing and should be avoided because they need time to build relationships with the business world, and they are afraid of losing the prestige or trust of the business world, so there is a "reluctance" in being willing to report the occurrence or presence of criminal acts. environment.
4) There is a view that considers environmental crime is not a serious legal violation, this case can only be resolved administratively, especially if the crime is committed by a corporation. Perpetrators of corporate crime are always "considered" good and respected citizens in the eyes of society.
5) The limited knowledge and experience of investigators in handling cases related to corporations, makes investigators feel
6) This work is "hard" and tedious (because it requires more thought, attention and willpower), so that the enthusiasm to handle the case decreases over time, let alone encountering obstacles in proving or looking for evidence.
7) There is a tendency for the authorities (administrative) to view violations of environmental law as administrative violations, and to view criminal law handling as not being able to make quick decisions.

Law no. 32 of 2009 concerning Environmental Management and Protection has regulated integrated law enforcement in Article 95 paragraph (1) stating: in the context of law enforcement against environmental crimes, integrated law enforcement can be carried out between civil servant investigators, police and prosecutors under Ministerial coordination.

Triangle Integrated Environmental Criminal Justice System (an integrated triangular system of environmental criminal law enforcement) involving investigators, public prosecutors and expert witnesses. This integrated triangular system stems from the existence of certain characteristics in environmental crimes. This system is also a response to criticism of the

fragmented function of our law enforcers as a result of the rigid implementation of the principle of functional differentiation in the field, and giving rise to gaps in the non-functioning of the check and balance system.

6. Criminal law is still the ultimate remedy in enforcing environmental law

Difficulties or obstacles to the principle of subsidiarity in law enforcement practices in UUPLH No. 23 of 1997 has been revised in UUPPLH No. 32 of 2009 by eliminating the principle of subsidiarity by introducing the principle of *ultimum remedium* in the general explanation number 6 and Article 100 paragraph (2). The meaning of this principle is further emphasized as stated in Article 100 paragraph (2) which states that every person who violates waste water quality standards, emission quality standards or nuisance quality standards can only be punished if the administrative sanctions that have been imposed are not complied with or the violation is committed more than from one time.

In practice, administrative officials say the time has not yet come to use criminal law instruments, while the public prosecutor says it is time to use criminal law. This gives rise to debate between administrative officials and public prosecutors about when it is time to use the final remedy (criminal law). With the inclusion of the principle of subsidiarity which has been replaced with the principle of *ultimum remedium* with certain conditions, it shows the attitude of law makers who do not want to use criminal procedures and criminal sanctions which usually have coercive power to ensure compliance with environmental law. The use of the principle of subsidiarity/*ultimum remedium* with certain and written conditions can reduce the coercive nature as one of the characteristics of environmental criminal provisions.

The existence of requirements for the use of criminal procedures and threats of criminal sanctions in the UUPPLH gives the impression, at least in the minds of law makers, as if law enforcers are more often or very excessive use of criminal law procedures and criminal sanctions rather than administrative or civil procedures, thus requiring legislative policies to limit the space for law enforcers to use criminal procedures and criminal sanctions. This fundamental weakness can ensure that enforcement of criminal law in the UUPPLH will experience obstacles as in the previous UUPLH.

The aforementioned obstacles align with the effectiveness of sanctions, as theorized by Soerjono Soekanto. According to this theory, law enforcement is influenced by five interconnected factors, with the fulfillment of each factor impacting the others. These factors encompass (1) the law itself; (2) the execution of the law; (3) the availability of facilities and infrastructure; (4) societal factors; and (5) cultural aspects. In the context of enforcing criminal

laws related to environmental pollution and destruction, challenges arise in proving the elements of an offense. Investigators, especially when dealing with corporate entities, often lack the capacity to comprehend technical aspects, hindering the prosecution process. For instance, establishing evidence for actions surpassing environmental quality standards requires scientific expertise, compelling investigators to involve experts. However, discrepancies in expert opinions, each scientifically valid, can complicate matters for investigators.[32]

Conclusion

In conclusion, the current legal framework provided by the PPLH Law, while serving as a foundation for addressing environmental crimes, falls short in prioritizing environmental restoration. Consequently, a comprehensive criminal law policy is imperative to meet the community's demand for legal certainty and environmental protection. However, the current enforcement of criminal law in the environmental sector has not met anticipated objectives. This failure is attributed to a lack of cultural, structural, and substantive synchronization within the criminal justice system. Six significant obstacles, namely legal factors, constraints in law enforcement human resources, inadequacies in facilities and infrastructure, insufficient prioritization of environmental actions, coordination challenges among agencies handling environmental crimes, and the continued reliance on criminal law as the ultimate remedy, impede effective law enforcement.

To address these challenges, the establishment of an Integrated Environmental Criminal Justice System is advocated. This triangular system, fostering integrated coordination among police investigators, prosecutors, and expert witnesses, aims to overcome the existing deadlock in law enforcement, particularly in environmental law. Specialized police investigators and prosecutors focused on environmental issues, especially in industrial and mining areas, are deemed essential. Emphasizing a preventive and repressive stance, this proposed system advocates for unity within the criminal justice framework, ensuring a more effective and harmonized approach to environmental law enforcement.

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[32] Soekanto, Soerjono. *Faktor-Faktor ang Mempengaruhi Penegakan Hukum.* (Jakarta: Raja Grafindo Persada, 2004).

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Acknowledgment

Authors express thankfulness to Research and Community Services Universitas Negeri Semarang, and Research Unit at Faculty of Law UNNES.

Funding Information

This research funded by Universitas Negeri Semarang (UNNES)

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.